

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3117 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

TARACHAND M BAJAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3117 of 1988
MR DU SHAH for Petitioner
MR. M.A. BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/03/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution of India, the petitioner firm, dealing in manufacturing of medical and toilet preparations, has challenged the Circular dated 15.9.1987 issued by the Industries Commissioner, Ahmedabad, whereby the product of French Polish, thinner (Industrial

solvent) has been included in prohibited item under the Bombay Prohibition Act.

2. The petitioner holds the requisite licence for manufacturing of medical and toilet preparations under the relevant Rules. He also holds D.S.P. I licence for possession and use of ordinary denatured spirit for bona fide purpose of manufacturing French Polish and thinner. The petitioner applied to the Commissioner of Industries at Ahmedabad for approval of the formula for N.C. Industrial Solvent. On 21/23-4-1987 the Deputy Industries Commissioner wrote a letter to the petitioner firm for sending certified copy of the licence issued by the Prohibition and Excise Department for manufacturing of N.C. Industrial solvent. Pursuant to the said letter, the petitioner sent his reply along with copy of the licence which was granted to him. However, the petitioner could apply for quota of spirit required for N.C. Industrial solvent only after his formula was approved by the Commissioner. On 15.5.1987, the petitioner sent a reminder for approval of N.C. Industrial solvent formula. On 9.6.1987 the Deputy Industries Commissioner wrote a letter to the petitioner that he was not possessing licences from the Prohibition and Excise Department for use of spirit for manufacturing of N.C. Industrial solvent and therefore his formula could not be approved. Moreover, permission was not being granted for a new item. Again on 18.8.1987 the petitioner sent a reply stating that he was holding D.S.V. and D.S.P. I licence from the Prohibition and Excise Department for possession and use of ordinary denatured spirit for which regular allocations were made by the Industries Commissioner. Therefore, the petitioner again pressed for the approval of the formula. Thereafter, several reminders were sent and ultimately on 3.11.1987 the Deputy Commissioner of Industries sent a communication to the petitioner approving the formula of N.C. Industrial Solvent. Therefore, on 26.11.1987, the petitioner wrote a letter to the Industries Commissioner for allocation of 3000 b. litres of ordinary denatured spirit per month i.e. 36000 B. litres of ordinary denatured spirit per annum for manufacturing N.C. Industrial solvent. In response to the said communication, Industries Commissioner sent communication to the petitioner stating that the N.C. Industrial Solvent was a variety of thinner which was prohibited by Circular dated 15.9.1987 issued by its office. Therefore, additional quota of 3000 b. litre of ordinary denatured spirit per month cannot be granted. On 12.1.1988 the Industries Commissioner declared policy not to encourage units manufacturing French Polish thinner

(Industrial solvent), cloral and its derivatives and other five items by supplying alcohol.

3. Aggrieved by the aforesaid Circular and not granting additional quota of 3000 b. litres of ordinary denatured spirit, the petitioner has filed this petition under Article 226 of the Constitution of India and prayed for a direction that the Industries Commissioner has no jurisdiction or authority to issue the alleged circular dated 15.9.1987 or to declare policy not to encourage the units manufacturing French Polish, thinner (Industrial solvent) and its derivative by supplying alcohol. It is also prayed to declare that pursuant to the Circular issued 15.9.1987, communications dated 2.12.1987, 12.1.1988, 3.3.1988 and 6.4.1988 at Annexures-L, M, N and P respectively denying the petitioner the required quota of alcohol for manufacture of N.C. Industrial Solvent, are violative of the fundamental rights of free trade guaranteed by Article 19(1)(g) of the Constitution of India.

4. On 18.9.1988 rule was issued and since interim relief was not pressed, it was not granted. Pursuant to the issuance of rule, the respondents filed their appearance. However, no affidavit in reply has been filed controverting the averments made in the petition.

5. I have heard learned advocate Mr. D.U. Shah for the petitioner and the learned A.G.P. Mr. M.A. Bukhari for the respondents and considered the documents which form part of record of the petition.

6. Learned advocate Mr. Shah contended that since the Deputy Commissioner of Industries has approved the formula of N.C. Industrial Solvent in favour of the petitioner, the request for allocation of 3000 b. litres of ordinary denatured spirit for manufacturing of N.C. Industrial solvent should not have been denied by the Industries Commissioner pursuant to the Circular dated 15.9.1987. Therefore, he challenged the said Circular as well as the denial of the required quota of 3000 b. litres of ordinary denatured spirit. He also drew my attention to the communication dated 6.4.1988 addressed by the Industries Commissioner, wherein it is mentioned that the petitioner's unit is manufacturing toilet preparations and thinner. Therefore, if the petitioner unit needs more alcohol, it may send the requisition of the alcohol in the prescribed proforma. He criticised the aforesaid attitude of the authority by contending that on one hand the petitioner's demand was repudiated

and on the other by sending the said communication the petitioner was asked to provide particulars about his requisition of the additional quota of ordinary denatured spirit.

7. Learned A.G.P. Mr. Bukhari contended that pursuant to the letter dated 6.4.1988 written by the Industries Commissioner to the petitioner, the petitioner has not sent his requisition for additional quota of the ordinary denatured spirit in the prescribed proforma. Therefore, if the petitioner now sends his requisition by giving full particulars then the same will be considered by the respondents considering the prevalent law as well as the latest policy of the State Government.

8. Having given anxious and considered thought to the submissions of both the counsel and also the averments made in the petition as well as the Annexures annexed with petition it may be appreciated that so far as the impugned circular is concerned, it has not been annexed with the petition by the petitioner. Therefore, without examining impugned Circular it cannot be decided as to whether the Industries Commissioner has no jurisdiction or power to issue the said Circular or to declare a policy not to encourage units manufacturing French Polish, thinner (Industrial solvent) and its derivatives and other items by supplying alcohol. Therefore, the said relief cannot be granted.

9. Now so far as the other relief of supplying additional quota of 3000 b. litres of ordinary denatured spirit per month, which was made in the year 1988, is concerned, same also cannot be granted in the year 2000 i.e. after a period of 13 years since the policy of the State Government must have gone on changing from time to time. Therefore, it will be open for the petitioner to submit a fresh application for getting additional quota of 3000 b. litres of ordinary denatured spirit giving full particulars about his requirement and the authority shall consider such application made by the petitioner in light of the prevalent law and the latest policy of the State Government framed under the Prohibition Act.

10. In the net result, the petition fails and is dismissed accordingly with no order as to costs. Rule is discharged. In case the petitioner submits a fresh application for getting additional quota of ordinary denatured spirit, giving full particulars about his requirement for his product, in the prescribed proforma, the authority shall decide the said application in accordance with law and the latest policy of the

Government framed under the Prohibition Act within a reasonable period.

(A.M. KAPADIA, J)

(pkn)